

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 155 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy  
of the judgement?
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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DILIP NATVARBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR DR DHIMAR for Petitioner  
MRS BR GAJJAR, APP for Respondent No. 1  
Respondent No. 2 served  
Respondent No. 3 unserved

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/04/98

ORAL JUDGEMENT

Heard learned Advocate Mr.D.R. Dhimar appearing  
for petitioner. Rule. Learned APP Mrs.BR Gajjar waives  
service of rule on behalf of respondent No.1 Respondent  
No.2 served.

2. The petitioner has claimed interim custody of a Maruti Van bearing Registration No.GCW 9345 which is seized and attached by Palsana Police, under an offence registered vide Crime Register No. III - 772 of 1997 for the offence made punishable under Section 66(1) B and Section 65A and 81 of the Bombay Prohibition Act.

3. The petitioner has contended that having come to know about the detention of said vehicle by the police, the petitioner made application to the court of learned JMFC, Bardoli and claimed the interim custody of the said vehicle and produced necessary documents to show the ownership. That during the hearing, learned JMFC, Bardoli, observed that said vehicle was also involved in the offence registered by Palsana Police vide Crime Register No.III 536 of 1995 under Sections 66(1)B and 65A and 81 as well as 116(2) of the Bombay Prohibition Act. That a Criminal Case No. 1631 of 1996 is pending in the court of JMFC, Bardoli for the said offences. That on the said ground, the court of JMFC, Bardoli, rejected the application of present petitioner for interim custody of the said vehicle. Being aggrieved and dissatisfied by the said order, the petitioner filed the Criminal Revision Application No. 82 of 1996 in the court of learned Sessions Judge, Surat. That learned Additional Sessions Judge, Surat, vide order dated 12.11.1997, rejected the said Revision Application again on the same ground and thereby the petitioner has approached to this court by filing the present petition.

4. Learned Advocate appearing on behalf of the petitioner has heavily relied on observations made by the High Court of Bombay reported in 1987 Cr.LR (Bom) page 240 and has urged that present petitioner who is the owner of the vehicle is not involved in any offence as alleged on behalf of respondent before the court of learned JMFC and Sessions Court. That petitioner cannot be responsible for the user of vehicle without his knowledge or his connivance. That at present the said vehicle is lying unused in an open place pending the trial. That trial is likely to be protracted and as such vehicle shall sustain considerable damage for non-use and necessary maintenance, which would result into damage to the petitioner. Under the circumstances, the interim custody of the vehicle may be entrusted to the petitioner on appropriate conditions.

5. Learned APP Mrs. B.R. Gajjar has opposed the petition contending that subject vehicle has been used

twice into the same offence of prohibition in breach of condition imposed by the court while giving interim custody at the first time. That there is no guarantee that said vehicle again should not be used for such illegal activity. She has referred to and relied on observations made by this Court in the matter reported vide 36(2) GLR page 1346 in support of said submission.

6. Having regard to facts and circumstances apparent from the material produced on the record, in my opinion, it would not be unjust or improper if interim custody is entrusted to the petitioner by imposing some strict conditions. That the decision referred to and relied on by learned APP reported in 36(2) GLR page 1346 has no application to the facts of the present case as such observations are made in the matter of confiscation of a vehicle for offences under Forest Act 1927.

7. On the basis of above stated discussion, learned JMFC, Bardoli, District Surat, is directed to hand over the interim custody of subject vehicle - a Maruti Van bearing Registration No. GCW 9345 from the custody of Investigation Officer of Crime Register No. III 772 of 1995 on following conditions:

- (a) The petitioner shall execute a personal bond of Rs. 1,50,000/- (Rupees one lac and fifty thousand only) and shall furnish one surety for the like amount to the satisfaction of the court of learned JMFC, Bardoli, District Surat for due compliance of this conditions.
- (b) The petitioner shall produce the subject vehicle to the Palsana Police Station for inspection on every 1st and 15th day of English Calendar Month.
- (c) The petitioner shall not transfer, assign or part with the possession of subject vehicle without the prior permission of the court of learned JMFC, Bardoli.
- (d) The petitioner shall not remove or replace any spare parts or cause any change in the subject vehicle without the prior permission of the court of learned JMFC, Bardoli, District Surat till further order.
- (e) The petitioner shall take due care and caution to see that subject vehicle is not involved in any illegal activity during his interim custody under this Order as the petitioner has failed to take

due care and caution against such user of the  
subject vehicle earlier.

In view of the aforesaid directions this Special  
Criminal Application succeeds. Rule is made absolute  
accordingly. No order as to costs. Direct service is  
permitted.

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p.n.nair